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Message Text

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RSC-01 CIAE-00 DODE-00 PM-07 H-02 INR-10 NSAE-00

NSC-10 PA-03 PRS-01 SS-15 USIA-12 CPR-02 RSR-01 SY-10

OIC-04 USSS-00 FBIE-00 /167 W
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R 112222Z JUL 73
FM USMISSION USUN NY
TO SECSTATE WASHDC 8725
INFO AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY BRUSSELS
AMEMBASSY BONN
USMISSION GENEVA
AMEMBASSY OTTAWA
AMEMBASSY STOCKHOLM
AMEMBASSY COPENHAGEN
AMEMBASSY VIENNA
AMEMBASSY CANBERRA
AMEMBASSY THE HAGUE

C O N F I D E N T I A L SECTION 1 OF 2 USUN 2539

GENEVA FOR KEARNEY

E.O. 11652: GDS
TAGS: PFOR, PINS, UN, NL, AS, AU, UK, BE, GW, FR, SW
SUBJ: PROTECTION OF DIPLOMATS

REF: USUN'S 2308

SUMMARY: ARTICLE BY ARTICLE DISCUSSION ILC TEXT WITH WESTERN COLLEAGUES REVEALED SUBSTANTIAL GAPS REMAIN IN WESTERN POSITIONS. FRANCE REMAINS BASICALLY HOSTILE, FRG, AUSTRIA, BELGIUM HAVE SIGNIFICANT CHANGES THEY PLAN INSIST ON. NETHERLANDS, AUSTRALIA AND TO SLIGHTLY CONFIDENTIAL

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LESSER EXTENT UK AND POSSIBLY SWEDEN APPEAR THINKING

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ALONG SAME GENERAL LINES AS USG. SUBSTANTIAL WORK IN
CAPITALS REQUIRED IF WE TO HAVE RELIABLE NUCLEUS SUPPORT
FOR ADOPTION CONVENTION ALONG LINES ILC DRAFT AT
COMING UNGA.

1. VAN BRUSSELEN (BELG) CONVENED INFORMAL DISCUSSION
GROUP ON JUL 10 TO CONTINUE CONSIDERATION PROTECTION OF
DIPLOMATS. AUSTRALIA, AUSTRIA, BELGIUM, CANADA, DENMARK,
FRANCE, LUXEMBOURG, NETHERLANDS, SWEDEN, UK, US PRESENT.
VAN BRUSSELEN SUGGESTED DISCUSSION TURN TO ARTICLE BY
ARTICLE CONSIDERATION ILC DRAFT BUT THAT DISCUSSION BE
GENERAL EXCHANGE RATHER THAN ATTEMPTING DETAILED DRAFTING
AT THIS STAGE. GROUP AGREED.

2. ARTICLE 1

VAN BRUSSELEN STATED GOB DID NOT THINK 1(A) WAS
NECESSARY SINCE IT ALREADY COVERED BY EXISTING LAW (BELGIAN
ATTANTAT CLAUSE) AND BELIEVED 1(B) SHOULD BE NARROWED SINCE
AS DRAFTED AT INCLUDED THOUSANDS AND THOUSANDS OF INDIVIDUALS.
VON KYAW (FRG) BOIVINEAU (FRANCE) STRONGLY SUPPORTED BELGIAN
POSITION ON 1(B). SUNDBERG (SWEDEN) KUEN (AUSTRIA),
FREELAND (UK) CALLED FOR GREATER PRECISION IN DRAFTING OF
1(B). SWEDEN AND AUSTRIA SUGGESTED DETAILED SPELLING OUT
OF CATEGORIES. FREELAND SUGGESTED "PROTECTED IN THIS COUNTRY
WHERE THE OFFENSE OCCURRED" SO UK WOULD NOT BE FORCED REGARD
PERSONS PRESENT IN OR TRANSITING UK AS PROTECTED BY SOME
CONVENTION OR OTHER OF WHICH HMG NOT PARTY. FREELAND SAID
UK CONTINUED HAVE DOUBTS ABOUT INCLUSION HEADS OF GOVERNMENT
BUT WOULD NOT MAKE IT STICKING POINT. MISOFF TOOK ISSUE
WITH ABOVE RESTRICTIVE VIEWS ARGUING DELETION 1(A) WOULD
CREATE PECULIAR CONVENTION THAT SPECIFIED COVERAGE FOR
THIRD SECRETARIES BUT MADE NO SPECIAL PROVISIONS FOR
HEADS OF STATE AND GOVERNMENT WHO REQUIRED BROADER
COVERAGE. SO FAR AS DELETING REFERENCE TO HEADS OF GOVT
MISOFF ARGUED THAT IN ALMOST ALL CASES WHERE STATE HAD HEAD
OF GOVT AND HEAD OF STATE ATTACK ON FORMER MORE LIKELY IF
ANYTHING TO CREATE INTERNATIONAL TENSIONS THAN ATTACK ON
HEAD OF STATE WHO FREQUENTLY MERE FIGUREHEAD NOT WELL KNOWN
OUTSIDE HIS OWN STATE. WHILE RECOGNIZING 1(B) COVERED VERY
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LARGE NUMBER OF INDIVIDUALS MISOFF POINTED OUT THIS DID NOT
MEAN THERE WOULD BE THOUSANDS OF CASES UNDER CONVENTION BUT
MERELY RECOGNIZED FACT THAT IF WE ARE RESPONSIBLY TO COVER
PROBLEM WE MUST COVER ALL INVOLVED NOT DECLARE OPEN SEASON
ON THIRD SECRETARIES OR ATTACHES. MISOFF INDICATED WILLING-
NESS EXAMINE DRAFTING 1(B) WITH VIEW GREATER CLARITY AND
PRELIMINARY VIEW UK SUGGESTION MIGHT BE POSSIBLE WAY.
BOIVINEAU (FRANCE) SAID GOF BELIEVED ALL PERSONS INCLUDING

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TOURISTS ENTITLED SPECIAL PROTECTION AND CONSEQUENTLY WOULD LIKE REPLACE "INTERNATIONALLY PROTECTED PERSON MEANS" WITH "SPECIAL PROTECTION IN VIEW OF CUSTOMARY OR CONVENTIONAL INTERNATIONAL LAW MEANS."

2. SCOPE

WIDE RANGING DISCUSSION TOOK PLACE IN CONTEXT ARTICLES 1 AND 2 WHETHER CONVENTION SHOULD COVER ALL ATTACKS ON DIPLOMATS WHEN ATTACKER KNEW HE WAS ATTACKING DIPLOMAT OR ONLY WHEN ATTACK MADE BECAUSE VICTIM WAS A DIPLOMAT. VON KYAW ARGUED CONVENTION SHOULD DEAL ONLY WITH CRIMES RELATED TO STATUS I.E. ATTACKS AGAINST DIPLOMAT BECAUSE HE WAS DIPLOMAT SINCE IT WOULD CREATE MASSIVE PROBLEMS AND ABSURD SITUATION IF EVERY COMMON CRIME COMMITTED AGAINST A DIPLOMAT WERE COVERED. BOIVINEAU, VAN BRUSSELEN, SUPPORTED FRG VIEW. WYNDHAM (AUSTRALIA), VAN WALSUM (NETH), KUEN (AUSTRIA), AND MISOFF TOOK STRONG ISSUE WITH THIS VIEW URGING THAT SUCH A RESTRICTION RAISED QUESTION OF MOTIVE NOT INTENT, THAT CASES WHERE COMMON CRIME INVOLVED AND THERE NO POLITICAL OVERTONES BE VERY UNLIKELY TO INVOLVE INVOKING OF CONVENTION SINCE MUGGERS AND RAPISTS DO NOT USUALLY FLEE TO ANOTHER COUNTRY, THAT ANY EFFORT TO DRAFT PARA GERMANS SUGGESTED WOULD CREATE MASSIVE UNCERTAINTY AND LEAVE IMMENSE LOOPHOLES WHICH PRACTITIONERS OF INTERNATIONAL VIOLENCE COULD AND WOULD TAKE ADVANTAGE OF, THAT PROBLEMS OF PROOF WOULD BE STAGGERING. VAN WALSUM ASKED BOIVINEAU HOW COME GOF TOOK SUCH A BROAD VIEW OF COVERAGE REQUIRED FOR JOURNALISTS AND SUCH A NARROW VIEW OF COVERAGE REQUIRED FOR DIPLOMATS. BY WAY OF REPLY BOIVINEAU BLUSHED. MISOFF LEFT NO DOUBT CHANGE ALONG LINES PRESSED BY FRG TOTALLY UNACCEPTABLE TO US.

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4. ARTICLE 2(3)

BOIVINEAU, VAN BRUSSELEN, WYNDHAM AND FREELAND VOICED OBJECTION TO COMPLETE UNIVERSAL APPLICATION OF PARA. FREELAND SUBMITTED ALTERNATIVE UK TEXT (COPY POUCHED BETTAUER L/UNA). MISOFF AND TO LESSER EXTENT VAN WALSUM AND SUNDBERG EXPRESSED PREFERENCE FOR ILC APPROACH. MISOFF URGED THAT EVEN THOSE WHO PREFERRED MORE LIMITED SCOPE CONSIDER WHETHER IT TACTICALLY USEFUL URGE SUCH A VIEW AT THIS TIME.

5. ARTICLE 4

VON KYAW QUERIED WHETHER IT NECESSARY INFORM ALL OTHER STATES OR ONLY LIKELY PLACES.

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6. ARTICLE 5

VAN BRUSSELEN EXPRESSED PREFERENCE FOR ARTICLE 6 MONTREAL CONVENTION. DESBIENE (CANADA) AND VON KYAW EXPRESSED LIKE PREFERENCE ON GROUND IT GAVE HOST STATE SLIGHTLY MORE FREEDOM OF MANEUVER. MISOFF NOTED AND FREELAND SUPPORTED VIEW THAT IF ANY CHANGE REQUIRED OPENING PHRASE OF MONTREAL ALL THAT NEED TO BE BROUGHT IN. FREELAND AND MISOFF NOTED NEED TO INCLUDE INTER-NATIONAL CIVIL SERVANTS BUT THOUGHT WE COULD PUT SECT.

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UP TO MENTIONING THIS WHEN COMITE GOT TO THE ARTICLE.
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7. ARTICLE 6

FREELAND EXPRESSED STRONG PREFERENCE FOR ART. 7 OF HAGUE CONVENTION AND VAN BRUSSELEN SUPPORTED. MISOFF POINTED OUT WOULD HAVE TO REDRAFT ART. 7 OF HAGUE TO FIT JURISDICTIONAL SCOPE SUBJECT CONVENTION.

8. GROUP AGREED MEET AGAIN THURSDAY, JULY 12 TO COMPLETE "FIRST READING."

9. COMMENT: IT CLEAR FROM ABOVE THAT WE HAVE WAY TO GO BEFORE WE HAVE ADEQUATE NUCLEUS OF STRONG SUPPORT FOR A COMMON POSITION. FRENCH ARE ONLY ONES WHO ADMIT TO DOUBTS ABOUT WHOLE EXERCISE. NETHERLANDS, AUSTRALIA AND UK ARE TRYING TO DEVELOP POSITION MAXIMALLY CONDUCIVE TO PRODUCING CONVENTION AT COMING GA. FRG, BELGIUM AND AUSTRIA HAVE A LONG WAY TO GO. SINCE WE'S IN GENERAL APPEAR SO FAR TO BE OPERATING FROM DETAILED INSTRUCTIONS, WE BELIEVE EXTENSIVE WORK IN EUR CAPITALS WITHIN NEXT FEW WEEKS AND IN SELECTED OTHER CAPITALS OVER NEXT SIX WEEKS IS REQUIRED IF THERE TO BE CREDIBLE CHANCE OF PRODUCING SATISFACTORY CONVENTION AT 28TH UNGA.
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